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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PATRICK CORRIGAN et al., Plaintiffs and Respondents, v. JILL DORE KENT, Individually and as Trustee, etc. Defendants and Appellants.	2d Civil No. B201166 (Super. Ct. No. 1189394) (Santa Barbara County)

Jill Dore Kent, individually and as trustee of the Jill Dore Kent living trust, appeals from the judgment ordering the reduction or removal of vegetation from her property and permanently enjoining her from planting vegetation impairing respondents' views. Appellant contends that the trial court applied the Santa Barbara view ordinance improperly because her vegetation did not unreasonably obstruct respondents' views. (See S.B. Ord. No. 5220, S.B. Mun. Code, §§ 22.76.010-22.76.140 (view ordinance).)[1] She also challenges the sufficiency of the evidence to support the court's conclusion that her vegetation constituted "spite fences." Respondents, Patrick Corrigan and Margaret Ingalls (husband and wife), request that we impose sanctions upon appellant for filing a

[1] All statutory references are to the Santa Barbara Municipal Code unless otherwise stated.

frivolous appeal, and that we remand this case with directions to the trial court to evaluate respondents' entitlement to post-judgment damages. We affirm the judgment and decline to impose the requested sanctions or to direct the trial court to evaluate respondents' entitlement to post-judgment damages.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and respondents live in the Riviera neighborhood of Santa Barbara, where residents enjoy views of the ocean, the harbor, the Channel Islands, downtown Santa Barbara, and other coastal cities. The City of Santa Barbara adopted a view preservation ordinance in January 2002 to establish "the right of a real property owner to preserve scenic views and access to sunlight free from unreasonable obstructions caused by the growth of trees under circumstances where such views and sunlight access existed prior to the growth of the unreasonable obstruction." (View ordinance, § 22.76.020, subd. A) The city's zoning ordinance has restricted the height of hedges for decades. The provisions relevant to this case prohibit hedges higher than eight feet. (§ 28, 87.170 (hedge ordinance).)

Appellant moved into her 1406 Grand Avenue residence in 1995, before the adoption of the view ordinance. Her property was very private when she purchased it. In November 1997, respondents Corrigan and Ingalls purchased property at 1408 Grand Avenue, which lies west of, and shares a border with, appellant's property. In 1997 and 1998, respondents enjoyed a southeastern ocean view from their Grand Avenue home.

In June 2002, respondents purchased another Riviera neighborhood property at 836 Jimeno Road with an abandoned, condemned house, which borders the northern side of appellant's property. According to respondent Corrigan, in 2002, he could "see everything" from his property, including Oxnard, the Channel Islands, and all of downtown Santa Barbara. Respondents subsequently moved to the Jimeno property. Respondent Ingalls used an office in their Grand Avenue house during the day.

Appellant's property has beautiful landscaping with many unusual plants. Because the elevation declines steeply away "from [respondents'] Jimeno property and downward through [her] property," appellant's property sits substantially below

respondent's Jimeno property. Appellant lost much of her privacy after respondents acquired properties adjacent to her north and west property boundaries. They can see her in her yard from the second floor and the balcony of their Jimeno home.

After respondents moved into their Grand Avenue property, appellant planted a hedge along the boundary between their Grand Avenue properties (the Grand Avenue hedge). Appellant later planted another hedge where her property joins respondents' Jimeno property (the Jimeno hedge). She planted the hedges to protect her privacy.

Appellant's trees and hedges grew above the height allowed by the hedge ordinance and blocked respondents' views. For example, when respondent Corrigan was lying or sitting down in his Jimeno house bedroom, he could no longer see the ocean. A column on his house also blocked his view but he liked looking at it. When respondent Ingalls used the meditation site in the northeast part of the Jimeno property, appellant's schefflera tree obstructed her ocean view. Appellant's Grand Avenue hedge blocked respondents' southeastern ocean view from their Grand Avenue house.

Beginning in 2005, respondents contacted appellant repeatedly to seek her cooperation in restoring or enhancing their views. Respondents also asked the city to enforce its hedge ordinance. Appellant generally did not respond to respondents' communications regarding view obstructions. She did allow a large oak tree on her property to be trimmed or thinned to enhance their views on at least one occasion.

After less formal means of resolving their dispute failed, in May 2006, respondents filed a complaint for injunctive relief and damages, alleging violations of the view and hedge ordinances and stating a nuisance cause of action. The nuisance action was based on a "spite fence" theory. Appellant cross-complained, stating multiple claims, and later dismissed all except an invasion of privacy claim.

After hearing the evidence, the court ruled in favor of respondents, and concluded that they were entitled to view restoration and that parts of appellant's vegetation constituted spite fences. The court ordered the removal or reduction of particular plants on appellant's property and on-going maintenance of her vegetation, and

enjoined appellant from planting other vegetation that would obstruct respondents' view corridors.

DISCUSSION

Appellant argues that the trial court applied the view ordinance improperly because it ordered her to remove vegetation that did not unreasonably obstruct respondents' views. We disagree.

I. *The Applicable Standard of Review and the Implied Findings Doctrine*

"The substantial evidence standard applies to both express and implied findings of fact made by the superior court in its statement of decision rendered after a nonjury trial. [Citation.] The doctrine of implied findings . . . provides that a 'party must state any objection to the statement in order to avoid an implied finding on appeal in favor of the prevailing party. . . . [I]f a party does not bring such deficiencies to the trial court's attention, that party waives the right to claim on appeal that the statement was deficient . . . and hence the appellate court will imply findings to support the judgment.' [Citation.] Stated otherwise, the doctrine (1) directs the appellate court to presume that the trial court made all factual findings necessary to support the judgment so long as substantial evidence supports those findings and (2) applies unless the omissions and ambiguities in the statement of decision are brought to the attention of the superior court in a timely manner. [Citations.]" (*SFPP, L.P. v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462; *Fladeboe v. American Isuzu Motors Inc*. (2007) 150 Cal.App.4th 42 (*Fladeboe*).)

In order to avoid an implied finding on appeal in favor of the prevailing party, an appellant must complete a "two-step process" to "bring any ambiguities and omissions in the statement of decision to the trial court's attention." (*Fladeboe, supra*, 150 Cal.App.4th at p. 59; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134 (*Arceneaux*).) First, the appellant must request a statement of decision. Once the statement of decision is issued, the appellant must bring any omissions or ambiguities to the attention of the trial court within specified statutory time limits. (Code Civ. Proc., § 632; Cal. Rules of Court, rule 3.1590; *Arceneaux*, at pp. 1133-1134.)

Here, appellant completed only the first requisite step, by requesting a statement of decision on April 30, 2007. The court issued and delivered its May 1, 2007 tentative decision, which provided in part as follows: "This Tentative Decision shall constitute the Court's Statement of Decision as described in California Rules of Court Rule 3.1590 *unless within 10 days either party specifies controverted issues or makes proposals not covered in the Tentative Decision.* If there are controverted issues or proposals not covered in the Tentative Decision, the Court will prepare the Statement of Decision after the parties have submitted their positions on the issues pursuant to the applicable time lines. (See California Rules of Court, Rule 3.1590.)" (Italics added.)

Appellant failed to timely specify any deficiencies in the tentative decision. On May 30, long after the May 11 deadline, appellant filed "Objections to Proposed Judgment and Renewed Request for Findings," which referenced her April 30 request for a statement of decision. On June 5, 2007, the court entered judgment for respondents. By failing to comply with the deadline for specifying controverted issues or making proposals for, or objecting to, the tentative decision, appellant waived the right to challenge the absence of express findings. We thus imply that the court made all factual findings necessary to support the judgment. (*Fladeboe, supra*, 150 Cal.App.4th at p. 59; *Arceneaux, supra*, 51 Cal.3d at pp. 1133-1134)

II. *Substantial Evidence Supports the Court's Express and Implied Findings*

A. *Unreasonable View Obstruction Findings*

The view ordinance provides relief for property owners whose views are unreasonably obstructed by vegetation. (§ 22.76.020, subd. A.) The court made no express finding that appellant's vegetation unreasonably obstructed respondents' views. For reasons explained above, appellant waived the right to challenge the absence of an express finding. In reviewing the evidence to determine whether substantial evidence supports the requisite finding that respondents' views were unreasonably obstructed by appellant's vegetation (*Crawford v. Southern Pacific Co*. (1935) 3 Cal.2d 427, 429), we give that finding “the benefit of every reasonable inference and resolv[e] all conflicts in its favor.'" (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 934.)

Substantial evidence supports the finding that appellant's vegetation unreasonably obstructed respondents' views. The court considered testimony and photographic evidence regarding the views from respondents' properties upon acquisition, upon the filing of the complaint and during the trial. In addition, the court visited the properties during trial. The evidence established that after respondents acquired their properties, appellant planted the Grand Avenue hedge, a dombeya tree, the Jimeno hedge, and other trees, and she allowed them to grow and block respondents' views of the sunrise, the ocean, the city and many landmarks.

B. *Spite Fence Findings*

We also find no merit in appellant's claim that the court applied Civil Code section 841.4 erroneously by concluding that all vegetation on appellant's property constituted a "spite fence." "Any fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property is a private nuisance. Any owner or occupant of adjoining property injured either in his comfort or the enjoyment of his estate by such nuisance may enforce the remedies against its continuance prescribed in . . . this code." (*Ibid.*) By failing to timely specify any deficiencies in the tentative decision, appellant waived her right to challenge the court's application of section 841.4.

Further, there is no merit to appellant's claim that the court's findings and orders applied to "all vegetation" on her property. The relevant findings are restricted to vegetation within specified view corridors. For example, "There are or may be other 'trees or vegetation' that [appellant] has planted or intends to plant that are *within the view corridors*. The general benchmark regarding trimming of that vegetation will also be that the Court has concluded that such vegetation/trees were planted as a 'fallback spite hedge' and it shall not exceed 8 feet in height plus the number of feet that the ground has fallen away on the slope of her property. . . ." (Italics added.)

The judgment describes the view corridors in clear specific terms. For example, one view corridor is described as "the view . . . enjoyed from the

[respondents' Grand Avenue property] across the westerly boundary line of [appellant's] property, commencing at the southwesterly edge of [her] residence on [her] property and extending to the southwesterly corner of [her] property[.]" The judgment further describes this corridor as "view corridor #4" in the relevant specified schematic trial exhibit.

The judgment also provides that "[a]s a bench mark, the trees and vegetation planted or to be planted within this corridor shall be maintained at a height no greater than the eight (8)-foot height restriction applicable to [appellant's] hedge and dombeya tree identified [specifically] above." The Grand Avenue hedge and the dombeya tree are along or near the property line between the parties' Grand Avenue properties and function as a fence for purposes of the spite fence statute. (See *Wilson v. Handley* (2002) 97 C.A.4th 1301, 1305 [row of trees planted along or near property line between adjoining parcels to separate or mark boundary between parcels is "structure in the nature of a fence" which may be spite fence under Civ. Code, § 841.4 if other elements are met].)

In addition to defining the areas of appellant's property subject to planting and growth restrictions, the court took care to limit the scope of the restrictions: "(3)(o) As between [respondents'] Jimeno property and [appellant's] property, [appellant] shall maintain the height of trees, hedges, and other vegetation planted and to be planted on [her] property so they do not intrude into the view corridors enjoyed from the [respondents'] Jimeno property across [appellant's] northerly boundary line of [respondents'] Jimeno property. . . . As a bench mark for the height limitation on such trees, the height limitations shall be the same as provided for in subparagraph (i) . . . ." (Italics added.) Subparagraph (i) provides: "The [schefflera, hymenosporum, podocarpus, pittosporum, melaluca and myosporum trees] shall, at [appellant's] election, either be removed or . . . reduced to a height as measured by the following bench mark: [A] height which does not exceed (8) feet in height plus the number of feet that the ground has fallen away on the slope of [appellant's] property as measured from [her]

property['s] north boundary line. (By way of example: if the tree has been planted on the property line, it cannot exceed eight (8) feet in height. If it is planted ten (10) feet back of the property line and the ground has sloped down five (5) feet, the tree shall not exceed thirteen (13) feet in height.)"

Appellant also contends that because the court found that she did not act maliciously in maintaining her vegetation, it erroneously applied Civil Code section 841.4 in concluding that her vegetation constituted a spite fence. We disagree. Appellant waived the right to make this contention by failing to timely specify any deficiencies in the tentative decision.

The court found that appellant's "maintenance of the [Grand Avenue] hedge over the 8-foot height . . . did not constitute willful and malicious conduct[,]" and it also found that appellant's "maintenance of the [same] hedge and dombeya tree constituted a spite fence." Collectively, these findings may appear ambiguous because the spite fence statute applies to a "fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property." (Civ. Code, § 841.4.) Because appellant failed to timely challenge the ambiguities in the court's findings, we imply that the court made a finding to support the judgment. (See *Fladeboe*, *supra*, 150 Cal.App.4th at p. 59; *Arceneaux*, *supra*, 51 Cal.3d at pp. 1133-1134.) It found that appellant maliciously planted the Grand Avenue hedge and the dombeya tree.

Substantial evidence supports the implied finding that appellant maliciously planted the Grand Avenue hedge and dombeya tree as a spite fence. The court determined that appellant planted them with the intention to impair and obscure respondent's views. She planted them after respondents acquired their Grand Avenue property; she declined or ignored respondents' frequent invitations to meet and discuss their concerns regarding her plants; and the plants exceeded the relevant permissible height limits.

C. *Fallback Spite Hedge Conclusion and Related Findings*

The court concluded that "[appellant's schefflera and hymenosporum trees] were planted as . . . a 'fallback spite hedge' and [that they should] not exeed 8 eight feet in height plus the number of feet that the ground has fallen away on the slope of [appellant's] property." It further concluded that "other 'trees or vegetation' that [appellant had] planted or intend[ed] to plant . . . within the view corridors that . . . were planted as a 'fallback spite hedge' and [that they should] not exceed 8 feet in height plus the number of feet that the ground has fallen away on the slope of [appellant's] property." The term "fallback spite hedge" reflects the space separating the plants from the property line and the use of the hedge ordinance's eight-foot limit rather than the spite fence statute's ten-foot limit.

The court's findings regarding the fallback spite hedge, which are supported by substantial evidence, are set forth below:

"12. The growth of [appellant's] trees . . . diminished a view from [respondent's] Jimeno property.

" . . . . . .

"15. The maintenance of the hedge by [appellant] over the 8-foot height and the trees . . . after request for reduction by [respondents] and the City of Santa Barbara, did not constitute willful and malicious conduct. It does, however, entitle them to an injunction and a judgment to abate the conduct.

"16. [Appellant's] planting and maintenance of the [Jimeno] hedge and trees constituted a spite fence.

"17. [Appellant's] maintenance of the [Jimeno] hedge and trees . . . interfered with the quiet use and enjoyment of [respondents'] property.

" . . . . . .

"25. Based upon the balancing tests that the View Ordinance requires . . . [,] this Court has determined that [appellant's] trees and vegetation have been deliberately planted and grown to impair and obscure the views that the [respondents'] property had a right to enjoy when it was purchased."

Appellant challenges the court's application of the spite fence statute to interior areas of her property that would not usually be subject to the hedge ordinance or the spite fence statute. Again, appellant failed to timely object to the tentative statement of decision although it included the remedy that she now seeks to challenge. Appellant thus waived the right to do so and we imply all findings necessary to support the court's judgment. The court fashioned a remedy in a case with unusual facts. The view ordinance was adopted after appellant acquired property on Grand Avenue adjacent to an abandoned, condemned property on Jimeno. Respondents later acquired that Jimeno property. Thereafter, appellant planted the Jimeno hedge and two trees. Her new plantings and older vegetation grew so high that they obstructed respondents' views. Appellant repeatedly failed to respond when respondents tried to communicate with her regarding the view obstructions. The court considered appellant's privacy concerns as well as the views from the Jimeno property before, upon and since its acquisition by respondents. The court viewed extensive photographic and documentary evidence, heard relevant testimony, and visited the parties' properties. Moreover, it took care to limit the impact of its orders upon appellant. For example, it allowed for increases in the maximum height of appellant's plants, based upon variations in elevation throughout her property.

For reasons explained above, we imply all findings necessary to support the court's judgment. (*Fladeboe, supra*, 150 Cal.App.4th at p. 59; *Arceneaux, supra*, 51 Cal.3d at pp. 1133-1134.) We imply that appellant maliciously planted the Jimeno hedge and other plants. We further imply that after visiting and viewing the parties' properties, and considering substantial testimonial and documentary evidence, the court found that respondents' views (as they existed upon acquisition of their property) were impaired when the height of appellants' plants within the view corridors exceeded eight feet, except where adjusted upward for elevation variations, as described above. Substantial evidence supports the court's express and implied findings. Consequently, we reject appellant's contention that the court applied the view ordinance, zoning ordinance, and spite fence statute unreasonably.

III. *Sanctions and Post-Judgment Monetary Damages and Sanctions*

Respondents filed a motion for sanctions in which they argue that appellant pursued a frivolous appeal solely for the purpose of delaying and avoiding compliance with the court's orders. We deny the requested sanctions. We also decline respondents' request to remand this case to the trial court with directions to evaluate whether they are entitled to damages from and after the June 5, 2007 judgment date.

The judgment is affirmed. Respondents shall recover costs.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Thomas P. Anderle, Judge

Superior Court County of Santa Barbara

Law Offices of Eric C. Kitchen and Eric C. Kitchen for Defendant and Appellant.

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